

September 28, 2005

(A-18J)

Laurel Kroack, Chief  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62706

Dear Ms. Kroack:

The purpose of this letter is to notify the Illinois Environmental Protection Agency (IEPA) that the United States Environmental Protection Agency (EPA) formally objects to the Title V operating permit that IEPA proposes to issue to Midwest Generation - Waukegan, located in Lake County, Illinois. EPA received the permit via IEPA's electronic transmittal on August 15, 2005.

We are basing our objection on our review of the proposed permit and the supporting information received for this facility, and issue it under the authority of Section 505(b) of the Clean Air Act (the Act) and 40 Code of Federal Regulations (C.F.R.) section 70.8(c) (see also Section 39.5 of the Illinois Environmental Protection Act). The bases for EPA's objection are: the permit may not include all the applicable requirements for the source, the statement of basis does not meet the requirements of 40 C.F.R. § 70.7(a)(5), the permit does not contain all the necessary periodic monitoring required by 40 C.F.R. § 70.6(a), and the public notice published by IEPA does not clearly inform EPA and the public whether IEPA made Title I changes in the permit action. Pursuant to 40 C.F.R. § 70.8(c), this letter and its enclosure contain a detailed explanation of the objection issues and a description of the changes IEPA must make to the permit to respond to the objection.

40 C.F.R. § 70.8(c)(4) and Section 505(c) of the Act provide that, if the permitting authority fails to revise and resubmit a proposed permit within 90 days to satisfy the objection, the authority to issue or deny the permit defaults to EPA, and EPA will act accordingly. Because the objection issues must be fully addressed within the 90 days, we suggest that you provide us with the revised permit in advance of the 90-day deadline in order that we may resolve any outstanding issues prior to the expiration of the 90-day period.

Although we are objecting to this permit, we recognize that IEPA has greatly improved this permit since it was originally proposed in October of 2003. For example, we are encouraged by the improvements in the quality of the periodic monitoring and reporting requirements. We remain committed to working with you to resolve the remaining issues. If we may provide assistance to you or your staff, please contact Pamela Blakley, Chief of the Air Permits Section, at (312) 886-4447.

Sincerely yours,

/s/

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosure

## ENCLOSURE

### EPA Objection Issues

1. *Applicable Requirements* - IEPA must review its records to determine whether the conditions in state operating permits, including permits 73030831, 75030155 and 73030829, are applicable requirements (within the meaning of 40 C.F.R. § 70.2) for the Waukegan facility. If they are, IEPA must include the terms and conditions of the operating permits in the Title V permit, or explain in the statement of basis how it has streamlined them into other requirements in Waukegan's Title V permit. However, if IEPA demonstrates that the operating permit conditions are no longer applicable to Waukegan, IEPA must explain in the statement of basis why each of the conditions in the state operating permits no longer applies to the source, and provide the public with notice and an opportunity to comment on any proposed changes to the federally enforceable terms of the pre-existing permit. Finally, if IEPA determines that the state operating permits for the Waukegan facility are not federally enforceable, it must explain in the statement of basis the reasons for its conclusion that the permits were not issued pursuant to the federally enforceable state operating permit program approved into the state implementation plan at 57 Fed. Reg. 59928 and, therefore, the permit terms are not an applicable requirement under 40 C.F.R. § 70.2.

2. *Statement of Basis* – We understand that IEPA uses the project summary and, in this case, the responsiveness summary to satisfy the requirement for a statement of basis. Although IEPA provided some explanation in these documents of the factual and legal basis for certain terms and conditions of the permit, this documentation did not provide at the time of the draft permit the bases or rationale for other terms and conditions, as required by 40 C.F.R. § 70.7(a)(5). Among other things, IEPA's record for the permit does not adequately support: (1) prompt reporting decisions under section 70.6(a)(3)(iii)(B); (2) exclusion of certain previous state operating permit terms and conditions; (3) recordkeeping decisions and periodic monitoring decisions under section 70.6(a)(3)(i)(B) and (C); (4) streamlining analyses; and (5) nonapplicability determinations, including a discussion of permit shields.

By failing to include appropriate discussion in the project summary or responsiveness summary, IEPA has failed to provide an adequate legal and factual explanation or rationale for significant elements of the permit. IEPA must include in the permit record a statement of the legal and factual basis for the issues identified above, as well as for other decisions that IEPA made in drafting the Waukegan permit. IEPA must make available to the public an adequate statement of basis that provides the public and U.S. EPA an opportunity to comment on the Title V permit and its terms and conditions as to the issues identified above.

3. *Periodic Monitoring* - Section 7.1.12(b) of the Waukegan permit provides that "compliance with the PM emissions limitation of 7.1.4(b) is addressed by continuous opacity monitoring in accordance with Condition 7.1.8(a), PM testing in accordance with Condition 7.1.7, and the recordkeeping required by Conditions 7.1.9." Section 7.1.7(e) requires that the

permittee submit a detailed description of the operating conditions during particulate matter (PM)

testing, including the operating parameters of the electrostatic precipitator (ESP) and the opacity data. Neither the permit nor the permit record demonstrates how the continuous opacity monitor (COM), particulate matter (PM) testing, and record keeping will be used to demonstrate ongoing compliance with the PM emission limitations. However, this permit term implies that the COMs, which measure opacity, and the operating parameters of the ESP would also address compliance with the PM emission limitation.

IEPA must include a specific opacity limit or a method for determining an opacity limit that would correlate the results of the PM testing and the opacity limit in a manner that assures compliance with the PM limit, and must incorporate into the permit specific operational limits (upper level or lower level) and/or operational ranges or a method for determining the ranges.

Furthermore, section 7.1.7(a)(i)(A) requires “PM emission measurements shall be made no later than one year after the effective date of this condition. (Measurements made after December 31, 2003 may satisfy this requirement.)” As detailed above, the permit relies on PM testing for establishing opacity monitoring and ESP parametric measures to assure compliance with PM emissions limitations. The opacity monitoring will not be sufficient to assure compliance until such testing occurs. Where the underlying applicable requirement has no periodic testing or monitoring, the Title V permit must include “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . .” 40 C.F.R. § 70.6(a)(3)(i)(B). In this instance, because the permit relies on the correlation between the PM testing and the parametric measures, the permittee must perform the stack testing as soon as possible so that it yields “reliable data from the relevant time period” and assures that this data is representative of the source's compliance. In order to meet these requirements, IEPA must require Waukegan to conduct PM testing for use in establishing opacity monitoring and ESP parametric measures as soon as possible so that the permit includes appropriate monitoring conditions that are in effect during the permit term and assures compliance with the PM emission limitations in section 7.1.4 for the entire term of the permit.

4. *Public Notice* - The public notice that IEPA provides for all CAAPP permits, and which it published for the Waukegan CAAPP permit, states “CAAPP permits may contain new and revised conditions established under permit programs for new and modified emission units, pursuant to Title I of the federal Clean Air Act, thereby making them combined Title V and Title I permits.” This language does not clearly inform EPA and the public whether the Waukegan permit action includes modifications to Title I permit terms.

IEPA must provide the public with notice and an opportunity to comment on this permit, clearly stating in its notice that the permitting action includes action on Title I terms if it has established, modified, streamlined or deleted any Title I terms in the permit action, and must include in the project summary or responsiveness summary a discussion of the bases for the establishment of or any changes to Title I permit terms.